



## MUSIC LICENSE AGREEMENT

This MUSIC LICENSE AGREEMENT (the "Agreement") made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between

### **CHECK ONE:**

\_\_\_\_\_ (Full Corporation Name including "Inc.", "Corporation", "LLC", etc. - **DBAs, partnerships or sole proprietorships, please sign as an Individual below**), a corporation organized under the laws of \_\_\_\_\_ (State/Province), \_\_\_\_\_ (Country) with principal offices located at \_\_\_\_\_ (Address)

### **OR**

\_\_\_\_\_ (Name), an individual residing at \_\_\_\_\_ (Address)

("Licensor") and Eos Music Corporation (Eos), a corporation organized under the laws of the State of Florida with principal offices at 4091 AMTC Center Drive, Clearwater, FL 33764.

WHEREAS Licensor owns and/or controls all rights to the sound recordings listed on Exhibit A attached hereto, along with the underlying musical compositions thereof (the "Licensed Songs"); and

WHEREAS Eos seeks the **non-exclusive** right to include the Licensed Songs in playlists comprising a background music and messaging service to be provided to businesses world-wide (the "Eos Service");

NOW THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, the parties agree as follows:

### **1. GRANT OF LICENSE**

**Notwithstanding anything herein to the contrary, the parties acknowledge and agree that any and all uses of the Licensed Songs shall be in connection with and furtherance of provision of the Eos Service to business establishments, and shall**

**in no way be construed to allow Eos to sell or otherwise distribute the Licensed Songs directly or indirectly to the public at large.**

(a) Subject to all of the terms and conditions hereof, Licensor hereby grants to Eos the right to include the Licensed Songs in the Eos Service. Specifically, Licensor grants to Eos the non-exclusive, world-wide right, but not the obligation, to copy, reproduce, sublicense, distribute, publicly perform, Broadcast, deliver simultaneously with non-synchronized visual image(s) and otherwise use all or any portion of the Licensed Songs, including without limitation, the right to Broadcast the Licensed Songs within the premises of business establishments (the "Customer Locations") and the right to reproduce the Licensed Songs on one or more devices or on any fixed media now known or hereafter created, including but not limited to, compact discs, digital video discs, memory sticks, tapes and CD-ROMs (each, a "Storage Media") and to copy, reproduce, transfer, and distribute such Storage Media. Eos reserves the right to feature the Licensed Songs in a playlist, include the Licensed Songs in a Storage Media for commercial or promotional use, sublicense any of its rights to its parent, subsidiaries or affiliates, or refrain from doing any of the foregoing in its sole discretion. For the purposes of this license, "Broadcast" shall mean to cause or permit others to cause the performance, telecast, broadcast, transmission, streaming, exhibition or distribution of the Licensed Songs in any manner including, without limitation, via the Internet, terrestrial radio, satellite, mobile, wireless, and cable broadcast and other similar digital and analog transmissions, on-demand streaming and tethered downloads. Licensor also grants to Eos the right to use samples from the Licensed Songs for purposes of creating demonstrations of the Eos Service, and the right to remaster, edit or otherwise modify the Licensed Songs to normalize levels or otherwise cause them to conform with other content used in the Eos Service, and to remove, obscure or otherwise ameliorate any expletives or offensive vocals in the Licensed Songs.

(b) Licensor shall promptly deliver to Eos audio CDs or digital files in MP3 format representing the Licensed Songs, along with the following data as applies to each Licensed Song and album containing Licensed Songs: filename, song title, album title and cover art, artist name, ISRC (if available), and song length. CD booklets (including listing of hidden "bonus" tracks, if applicable), ID3 tags (in MP3-format files), the Gracenote CD database, or a fully completed Exhibit A form are considered acceptable song data. If the above means of music or data transfer are unavailable, Eos may, at its sole discretion, permit Licensor to provide the Licensed Songs and/or required data via other means. Physical media submitted to Eos, including CDs, DVDs, and memory sticks/USB flash drives, will not be returned to Licensor.

(c) Licensor may from time to time deliver to Eos additional master sound recordings, and the same shall be considered Licensed Songs and shall be covered by the terms of this Agreement as if they were originally listed on Exhibit A attached hereto. Any additional content provided under this provision shall be accompanied by the same information required under Section 1 (b) above.

**(d) Licensor retains ownership of the copyrights and all other rights in the Licensed Songs subject only to the non-exclusive rights granted in this Agreement. Licensor is free to grant similar rights to others during and after the term hereof.**

(e) Licensor grants to Eos the right to use its name, logo, the names and likenesses of artists and other persons associated with the Licensed Songs, and the names and descriptions of Licensed Songs and albums containing Licensed Songs, including cover art, in its efforts to market the Eos Service, including but not limited to web sites, printed marketing material, audio advertisements, and on digital displays on Eos Service devices. Eos grants to Licensor the right to use the Eos name, logo, and web site addresses ([www.eosmusic.com](http://www.eosmusic.com) and [www.eosartists.com](http://www.eosartists.com)) to identify itself as an Eos licensor.

## 2. LICENSE FEE

(a) In full and final consideration of the rights granted herein, Eos hereby agrees to pay Licensor a license fee (the "License Fee") each calendar month for each subscriber physical business premises ("Customer Location") using a playlist of the Eos Service which includes any of the Licensed Songs, as set forth in the following table:

# of Customer Locations	Monthly License Fee per Customer Location
0-1000	\$5.00
1001-2000	\$4.50
2001-3000	\$4.00
3001-5000	\$3.50
5001+	\$3.00

(b) For any Customer Location where the Eos Service playlist includes sound recordings other than the Licensed Songs, Eos will pay to Licensor a prorated percentage of the License Fee. Such prorated percentage shall equal the percentage that Licensed Songs represent of the total number of songs included in the playlist provided to that Customer Location. For example, if the playlist for the Eos Service provided to a Customer Location includes a total of 100 songs in a calendar month, and fifty of those songs are Licensed Songs, Eos would pay to Licensor 50% of the License Fee for that month.

(c) Eos shall be entitled to provide the Eos Service for demonstration or promotional purposes on a non-revenue producing basis. No License Fee shall be payable in connection with such service.

(d) The License Fee shall be paid by check or electronic remittance when Licensor has accrued a minimum of \$10.00 in License Fees, or every six (6) months, whichever comes first. License Fees due are paid within thirty (30) days after the end of each calendar month.

(e) Eos shall deduct from the License Fee such sums as may be required to be deducted under any applicable statute, regulation, treaty or other law in connection with taxation or otherwise, and Licensor shall promptly execute and deliver to Eos such forms or other documents as may be required in connection therewith. If at the time Eos makes License Fee payments, Licensor has not provided all information reasonably requested, including but not limited to legal name and tax identification information, Eos shall hold the License Fee until the end of the calendar month during which Licensor has provided all such missing information.

(f) Eos shall provide to Licensor monthly electronic reports via email detailing, for each Customer Location, each Licensed Song played at that Customer Location during the previous calendar month, along with its ISRC (if available), how many times each Licensed Song played at that Customer Location, and what percentage of the total songs played at that Customer Location the Licensed Songs represented, as well as the total License Fee due to Licensor for that Customer Location.

(g) Eos shall keep accurate books and records concerning the calculation and payment of the License Fee. During the one-year (1-year) period following your receipt of a License Fee payment, Licensor may, at its own expense and upon reasonable notice, inspect such books and records related to that License Fee payment at Eos' offices or at a location specified by Eos, provided however that such inspection shall not interfere with Eos' normal business operations. If the inspection reveals that the License Fee was underpaid, Eos promptly will correct the deficiency together with interest at the rate quoted at that time by Bank of America as its "Prime Rate". It is understood that Eos may include certain advertising or commercial messaging within playlists as a part of the Eos Service; no portion of any sums received by Eos or its customers from the sale of such advertising or commercial messaging shall be included in the calculation of any sums payable to Licensor hereunder.

(h) Nothing herein shall be construed to require Eos to use any or all of the Licensed Songs in connection with the Eos Service.

(i) For Customer Locations that have Activated a new Eos Service subscription during the calendar month for which License Fee is being paid, Eos shall pro-rate the License Fee described herein to correspond with the percentage of the month for which Customer Location received the Eos Service. Activation is defined as the first day on which the Customer Location receives the Eos Service.

### **3. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION**

(a) Licensor warrants that it has the right and authority to license the rights licensed hereby and that Eos' use as permitted hereunder shall not violate the rights of any third party. Licensor represents and warrants that: (a) it has secured any and all third party consents necessary to grant the license described in Section 1 including without limitation the right to publicly perform the Licensed Songs without the approval or consent of any performing rights organization such as ASCAP, BMI, or SESAC; (b) neither the Licensed Songs nor Eos' use of the Licensed Songs in connection with the Eos Service as authorized herein will infringe on any copyright, patent, trademark, trade secret or other proprietary rights, rights of publicity or privacy, or moral rights of any person, firm, corporation, association, society or other entity; (c) except as described in Section 2, Licensor shall be responsible for the payment of any royalties or other sums due to or on behalf of any person who rendered services in connection with the Licensed Songs, any union or guild representing such person, the owner of any samples contained within the Licensed Songs, all rights holders in or to all underlying musical compositions and/or such rights holders' designated mechanical or performance rights administrator.

(b) Licensor agrees that it shall indemnify, defend and hold Eos, its employees, officers, directors, shareholders, agents, representatives, parent companies, affiliates, subsidiaries and customers harmless from any and all claims, liabilities, losses, damages and expenses (including, without limitation, fees and disbursements of counsel incurred by indemnitee in any action or proceeding between the parties hereto and between indemnitee and any third party or otherwise) arising out of or in connection with any breach of indemnitor's warranties, representations or covenants under this Agreement, provided any claim to which the foregoing indemnity may apply has been reduced to final adverse judgment by a court of competent jurisdiction or has been settled with indemnitor's prior written consent, which consent shall not be unreasonably withheld or delayed.

(c) Licensor warrants that none of the Licensed Songs have lyrics containing obscenities, nor do they relate to subject matter of a prurient, indecent, lewd or violent nature, nor do they contain derogatory lyrics based on race, religion, gender or national origin.

(d) Each party to this Agreement warrants and represents that it has the right to enter into this agreement and perform in the manner set forth herein and that it shall fully comply with the terms and conditions of this agreement.

#### **4. WARRANTY DISCLAIMER**

**EOS MAKES NO REPRESENTATION OR WARRANTY WITH REGARD TO THE EOS SERVICE OR ANY ACTIVITIES THEREUNDER, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE. IN ADDITION, EOS MAKES NO REPRESENTATION THAT THE OPERATION OF THE EOS SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. EOS SHALL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS IN THE EOS SERVICE. EXCEPT FOR DAMAGES RELATED TO A BREACH OF SECTION 3 HEREOF, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, STATUTORY OR INCIDENTAL DAMAGES ARISING FROM OR RELATING TO THE EOS SERVICE AND THIS AGREEMENT.**

#### **5. TERM/TERMINATION**

(a) The initial term of this Agreement is five years. Thereafter this Agreement shall renew automatically for successive one year terms unless either party notifies the other that it elects not to renew. Such notice must be provided not less than 120 days prior to the end of the current term.

(b) Licensor shall notify Eos in writing of any material breach of Eos' obligations hereunder. Eos shall have thirty (30) days in which to cure such breach. In the event such breach is not cured within said period, the license granted hereunder shall terminate and Eos shall discontinue use of the Licensed Songs within ninety (90) days. Any such termination shall not affect any of Licensor's or Eos' rights, which survive such termination, and all of Licensor's and Eos' agreements, indemnities, warranties, representations and obligations, which survive such termination, shall remain in full force and effect. In the event of a termination under this section, Licensor shall be

entitled to seek to enjoin or restrain Eos from use of the Licensed Songs ninety (90) days or more after said termination, but shall not be entitled to seek to enjoin or restrain Eos from otherwise providing the Eos Service.

## **6. ASSIGNMENT**

Eos may transfer or assign all or a portion of its rights hereunder to any person, corporation or entity, provided that such person, corporation or entity assumes all obligations of Eos hereunder in writing.

## **7. MISCELLANEOUS**

(a) All headings are for convenience only and shall have no legal or contractual effect.

(b) Nothing herein shall be construed to create a partnership, joint venture, employer-employee or agency relationship. All rights in and to the Eos Service shall be owned solely by Licensee, and Licensor shall have no rights therein.

(c) This writing sets forth the entire understanding between the parties with respect to the subject matter hereof, supersedes all prior oral agreements and no modification, amendment, waiver, termination or discharge of this agreement or any provision hereof shall be binding upon the parties hereto unless confirmed by a written instrument signed by authorized signatories of the parties.

(d) The invalidity or enforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof.

(e) No waiver by either party of any provision of or default under this Agreement shall affect the party's right thereafter to enforce such provision or to exercise any right or remedy under this Agreement.

(f) This agreement shall inure to the benefit of and be binding upon the parties and their respective successors, permitted assigns and representatives.

(g) This Agreement shall be governed by and construed in accordance with, and all legal issues arising from or related hereto shall be determined by the laws of the State of Florida without regard to that State's conflict-of-law provisions. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all of its costs and fees. "Cost and Fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrator's(s') fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

(h) All notices required to be delivered hereunder shall be given to the parties at their respective address set forth above, or such other address as each party respectively may hereafter designate by notice in writing to the other. All notices sent under this agreement shall be in writing and shall be sent by personal delivery, courier, or by registered or certified mail, return receipt requested.

LICENSOR:

EOS MUSIC CORPORATION:

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_